IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

Crl.MC.No. 1524 of 2006()

AGAINST THE ORDER DATED 24/04/2006 IN IN CRMP 1457/2006 IN ST.2724/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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PETITIONER:

M.K.KASSIM, S/O.M.A.KHALID,
AGED 39 YEARS, MADATHIKKAL HOUSE, T.O.G. PASS ROAD, NORTH KALAMASSERY, ERNAKULAM DISTRICT, NOW RESIDING AT PARALIL, BEHIND SURABHI HOTEL, THAIKKAVU, MUTTAM, THAIKKATTUKARA, ERNAKULAM DIST.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

RESPONDENTS:

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1. P.S.SUNIL KUMAR, S/O.SOMASUNDARAN PILLAI
AGED 36 YEARS, PANCHAVALLIL HOUSE, NORTH PARAVUR, ERNAKULAM DISTRICT, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER P.S.ANILKUMAR, S/O. SOMASUNDARAN PILLAI, PANCHAVALLIL HOUSE,N.PARAVUR, ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, OTTAPALAM POLICE STATION, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.
ADV. SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.1524 OF 2006

Dated this the 22nd day of March, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the Negotiable Instruments Act. The complainant has presented a complaint through his Power-of-Attorney holder. The Power-of-Attorney holder has been examined. The petitioner wants the complainant to be examined. The petitioner's application for examination of the complainant was dismissed by the learned Magistrate relying on the decision in **Thomas v. Vijayakumari** (2002 (1) KLT 689). To show his bona fides, the petitioner submits that he is willing to pay the actual air fare which the complainant will have to incur for the journey from his place of residence to the court and back. He has already deposited an amount of Rs.57,500/-. The learned counsel for the petitioner prays that the application may be reckoned not solely as one under Section 254(2) of the Cr.P.C.; but as one under Sec.311 of the Cr.P.C.

The bona fides of the petitioner is absolutely evident. In these circumstances, the petitioner may be granted an opportunity to examine the complainant under Sec.311 of the Cr.P.C., it is prayed.

2. The learned counsel for the respondent/complainant submits that the complainant shall appear if so directed; but he will have to ascertain from the complainant the date on which he will be able to avail leave and appear before the court.

3. I am, in these circumstances, satisfied that appropriate directions can be issued as virtually agreed between the counsel for the rival contestants.

4. This Crl.M.C. is, in these circumstances, allowed. The learned Magistrate shall grant the petitioner an opportunity to examine the complainant under Sec.311 of the Cr.P.C. on condition that he pays to the complainant the air fare to and fro as fixed by the learned Magistrate. The amount of Rs.57,500/- which is already in deposit shall be made use of for the said purpose. The learned counsel for the respondent/complainant

shall specify to the learned Magistrate the date on which the complainant can appear before the learned Magistrate to give evidence.

Sd/-
(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge